

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL CASE NO. 17 OF 2012

BETWEEN

REPUBLIC.....PROSECUTOR

AND

TOBIAS OWINO PANDE.....ACCUSED

RULING

1. On 6th March 2012, this court was informed that **TOBIAS OWINO PANDE** (“the accused”) had murdered his step-mother, **MARGARET AJWANG PANDE** (“the deceased”), on 4th March 2012 at Kanyadwera Sub-location of Kisumu West District within Kisumu County contrary to **section 203** as read with **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He pleaded not guilty and the prosecution called 5 witnesses.

2. It is not disputed that the deceased died as a result of excessive bleeding following rupture of the spleen as a result of blunt trauma inflicted on her abdomen. The postmortem form prepared by Dr Chemjor, who conducted the post-mortem at New Nyanza General Hospital Mortuary on 12th March 2012 was produced by Dr Nelly Wanjala (PW 5).

3. The main issue for consideration was whether the accused is the person who inflicted the injury on the deceased. George Ouma Olenyo (PW 1) testified that he was digging murram at his homestead when he heard a scream and saw the accused running towards him. He also heard people shouting that the accused had killed someone. When he went to the accused’s home, he found the deceased lying at the doorstep in a pool of blood. The police arrived and took the body to the mortuary.

4. The other witness to testify was the accused’s mother, Dinah Ongonga Pande (PW 2) who denied that she saw the accused beat the deceased. She was declared a hostile witness and when cross-examined, she told the court that the accused was not at home at the time and that the accused did not kill the deceased. She only found her co-wife dead.

5. The two police officers who gave evidence, AP Sergeant Elisha Okungo (PW 2) and Segeant Zablon Nyongesa only attended to the scene after they had been notified of the incident and were informed of what took place by persons who were not called as witnesses.

6. After hearing the prosecution evidence, I am now called upon to decide whether the prosecution had established a prima facie case to put the accused on his defence. At this stage a court is not required to establish that the prosecution has proved its case beyond reasonable doubt, it must nonetheless be satisfied that a reasonable tribunal directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

7. After considering the evidence, there is no evidence that put the accused at the locus in quo at the time the deceased was killed or other circumstantial evidence that would implicate him. No evidence was led to show that he was the only one at the homestead with the motive and opportunity to murder the deceased. Further the testimony of a hostile witness is useless cannot, in the absence of any other evidence, form the basis of a conviction. Although there is suspicion that he murdered his step mother, there is no evidence that outweighs the suspicion.

8. Under **section 306(1)** of the *Criminal Procedure Code (Chapter 75 of Laws of Kenya)*, I am required to enter a verdict of not guilty which I hereby do against **TOBIAS OWINO PANDE**. He is therefore acquitted and set free unless otherwise lawfully held.

DATED and DELIVERED at KISUMU this 22nd day of January 2018.

D.S. MAJANJA

JUDGE

Mr Oguso, Advocate for the accused.

Ms Barasa, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.